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Measures to eliminate international terrorism

Follow-up to the outcome of the Millennium Summit

The United Nations Global Counter-Terrorism Strategy

Identical letters dated 23 June 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the President of the General Assembly and the President of the Security Council

With regard to the letter sent by Denmark, Germany, Liechtenstein, the Netherlands, Sweden and Switzerland to the President of the Security Council on 27 May 2008, I have the honour to request — also on behalf of the co-sponsors — the publication of that letter and discussion paper (see annex) as a document of the General Assembly, under agenda items 108, 116 and 118, and a document of the Security Council. The publication will serve the broad interest of United Nations Members as demonstrated at a briefing at the United Nations on 13 June 2008 related to the issue of improving the implementation of sanctions regimes.

(*Signed*) Peter **Maurer**
Ambassador
Permanent Representative

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Annex to the identical letters dated 23 June 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the President of the General Assembly and the President of the Security Council

We, the undersigned representatives of Denmark, Germany, Liechtenstein, the Netherlands, Sweden and Switzerland, are writing to you on the issue of Security Council sanctions.

Our countries are strongly committed to the effective implementation of the Council's sanctions regimes. The 2005 Summit Outcome document underscored that sanctions remain an important tool in the United Nations efforts to maintain international peace and security. The General Assembly further resolved, inter alia, to ensure that sanctions are carefully targeted, and called upon the Security Council to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them.

We appreciate the significant progress the Council has made in this area with the establishment of the Focal Point on De-listing through resolution 1730 (2006), and wish to make a contribution to the Council's future work on this important issue. We therefore submit to Council members the attached discussion paper on the idea of establishing an expert panel assisting the sanctions Committees in the consideration of de-listing requests.

Representatives of Denmark, Liechtenstein, Sweden and Switzerland had the welcome opportunity to discuss elements of this paper with the Al-Qaida and Taliban sanctions Committee on 5 May 2008, and were greatly encouraged by the constructive dialogue with the Committee. We hope that the Security Council will equally find interest in these ideas, in particular in the context of the upcoming renewal of the Al-Qaida and Taliban sanctions regime. We are eager to continue and deepen the dialogue on this important matter with all members of the Security Council.

(*Signed*) Carsten **Staur**
Ambassador
Permanent Representative of Denmark to the United Nations

(*Signed*) Martin **Ney**
Ambassador
Deputy Permanent Representative of Germany
to the United Nations, Chargé d'affaires a.i.

(*Signed*) Christian **Wenaweser**
Ambassador
Permanent Representative of Liechtenstein to the United Nations

(*Signed*) Frank **Majoor**
Ambassador
Permanent Representative of the Kingdom of the Netherlands
to the United Nations

Ulla **Ström**
Ambassador
Deputy Permanent Representative of Sweden
to the United Nations, Chargé d'affaires a.i.

Peter **Maurer**
Ambassador
Permanent Representative of Switzerland to the United Nations

Enclosure

Improving the implementation of sanctions regimes through ensuring "fair and clear procedures"

Discussion paper

The 2005 World Summit Outcome document (para. 109) called upon the Security Council "to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions". The Security Council subsequently expressed its commitment to ensuring such fair and clear procedures (S/PRST/2006/28 of 22 June 2006), and took a welcome step in this direction with the establishment of the Focal Point in resolution 1730 (2006).

In the context of the Al-Qaida and Taliban sanctions regime, the Analytical Support and Monitoring Team has reported on legal challenges faced by Member States in domestic and international courts. In January 2008, the Advocate General of the European Court of Justice in his advisory opinion on two cases, which are still pending before the ECJ, argued that the Security Council's designation process under the Al-Qaida and Taliban sanctions regime did not respect the human rights of the designated individuals, groups and entities, and that it would therefore not be acceptable for the EU to take over United Nations designations without substantive review. Furthermore, an application relating to the implementation of these sanctions was recently brought against Switzerland at the European Court of Human Rights in Strasbourg.

These developments pose a risk for the effective implementation of the Security Council's targeted sanctions system. After improvements of the listing procedures, the concerns mainly deal with the de-listing procedures. These deficiencies have caused countries to hesitate with the submission of names for listing. They also underline existing concerns about the integrity and legitimacy of targeted sanctions in general. While the establishment of the Focal Point was an important step, further improvements are necessary. The Focal Point facilitates access to the de-listing procedure, though further improvements could be made in a cross-cutting manner, as was the case with resolution 1730 (2006), or alternatively with respect to individual sanctions regimes. The upcoming renewal of the Al-Qaida and Taliban sanctions regime by the end of June 2008 provides a good opportunity for improvements following any one of these approaches.

We encourage the members of the Council to enter into a dialogue with each other and with non-members with a view to making substantive improvements to the de-listing regime. Such steps should strike a careful balance between the competence and authority of the Security Council and its Sanctions Committee(s) in the area of international peace and security on the one hand, and the substantive requirements of "fair and clear procedures" on the other (cf. in particular the criteria enumerated in the letter of the Secretary-General of 15 June 2006).

The annex contains draft elements for discussion which could be helpful in striking said balance. Their core element is the suggested involvement of an advisory panel during the substantive phase of the de-listing procedure. Through its advisory function, such a panel would facilitate the dialogue with the petitioner and improve the regard for due process principles, as well as assist in improving consideration of the merits of the case, without prejudice to the decision-making power of the Sanctions Committee.

Annex

Elements for draft supplementary guidelines for the examination of Sanctions Committees' listing decisions

Scope of application

1. The following Supplementary Guidelines shall apply to decisions of the Security Council or any Committee established by the Security Council (Sanctions Committee, hereinafter the Committee) which make individuals, groups, undertakings or entities (the addressees) the object of restrictions (targeted sanctions) concerning their economic assets, economic transactions or freedom of movement (listing decision). A list of Security Council resolutions to which these Guidelines apply, to be amended every time this is rendered necessary by the adoption or amendment of a relevant resolution, is contained in the Annex to these Guidelines.[1]

2. These Guidelines are without prejudice to the right of any State to request a de-listing as provided by the relevant rules or guidelines applicable for the Committee in question.

Periodic review

The Committee shall ex officio keep the listing decisions under constant review, re-evaluating them on a regular basis, the intervals to be decided by the Committee, in particular in the light of new information submitted by Member States.

Panel

1. There shall be established a panel of [three/five] independent, impartial and judicially qualified persons for the purpose of examining listing decisions. The members of the panel shall be persons of high moral character and integrity and have proven experience in dealing with sensitive and confidential information.

2. The members of the panel will be proposed by the Secretary-General out of a list of candidates submitted by the Member States of the United Nations. They shall be appointed by the Security Council for a non-renewable term of [five] years.

3. The designating State(s) and the State(s) of residence and/or citizenship of the petitioner may each designate one ad hoc member of the panel.

[1] Resolutions 1132 of 8 October 1997, 1171 of 5 June 1998, 1267 of 15 October 1999, 1333 of 19 December 2000, 1390 of 16 January 2002, 1455 of 17 January 2003, 1483 of 22 May 2003, 1493 of 28 July 2003, 1521 of 22 December 2003, 1526 of 30 January 2004, 1532 of 12 March 2004, 1533 of 12 March 2004, 1584 of 1 February 2005, 1591 of 29 March 2005, 1596 of 18 April 2005, 1617 of 29 July 2005, 1636 of 31 October 2005, 1643 of 15 December 2005, 1649 of 21 December 2005, 1698 of 31 July 2006, 1718 of 14 October 2006, 1727 of 15 December 2006, 1735 of 22 December 2006, 1737 of 23 December 2006, 1747 of 24 March 2007.

Request for de-listing

1. Listed individuals, groups, undertakings and entities (the petitioner) may request a de-listing decision through the Focal Point or through the State of residence or citizenship. The petition shall be made in writing in one of the official languages of the United Nations and shall state the factual and/or legal grounds which in the view of the petitioner require de-listing.

2. Individuals, groups, undertakings or entities other than those listed may request a de-listing decision if they are personally and directly affected by the respective listing.

Examination by the panel

1. The Focal Point forwards the petition to the panel and informs the Committee about it.

2. The Committee may at any time decide a de-listing. In this case, the procedure before the panel is discontinued.

3. The panel examines the petition in a preliminary way. It rejects a petition without further examination where it finds that

- the petition is made by an individual, group, undertaking or entity which is not listed or not entitled to request a de-listing,
- the petition is a repetition of an earlier petition and does not put forward any new evidence or circumstances justifying a de-listing;
- the petition is manifestly ill-founded.

4. If the petition is admitted, the panel shall, within [two] weeks after admitting the petition, request the Committee and all United Nations Member States to submit, within [one] month, any relevant additional evidence or information.

Cooperation with the panel

The Committee, all Member States of the United Nations and all relevant international organizations shall cooperate with the panel to the fullest extent possible, in particular by providing any relevant information or evidence. The panel shall take the necessary measures to facilitate the receipt of information or evidence provided to its members on a confidential basis. Where a Member State or international organization is not in a position to submit relevant confidential information, it shall make every effort to submit other relevant information or evidence as detailed as possible.

Procedure before the panel

The procedure before the panel shall be governed by general principles of international law concerning fair procedure. The panel shall decide freely to use all information and evidence it deems appropriate. The panel shall take all necessary measures to ensure the confidentiality of information provided by Member States in accordance with the terms agreed with that State or the relevant standard practice. This does not preclude the panel from disclosing information or evidence to the petitioner which is not confidential, or new evidence or information which the panel itself generated using confidential information.

Reports and recommendations of the panel

1. Within [three] months after receiving the petition, the panel shall report its findings to the Committee. It recommends de-listing where the information and evidence available to the panel members does not justify the listing. Else it recommends the rejection of the petition.

2. The petitioner and his/her State of residence and/or citizenship shall be informed by the panel about the content of its recommendation.

3. A summary report with the recommendation(s) of the panel shall be published together with the decision(s) taken by the Security Council taking due account of the need to protect confidential information.